

Members

Rep. Robert Behning
Rep. Ralph Foley
Sen. Travis Holdman
Sen. Michael Delph
Sen. James Arnold
Sen. Greg Taylor
Scott Chinn
Jon Laramore
Hon. John G. Baker
Mike McMahon
Jerry Bonnet
Richard Bramer
Anita Samuel



CODE REVISION COMMISSION

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Authority: IC 2-5-1.1-10

MEETING MINUTES¹

Meeting Date: December 7, 2010
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Rep. Robert Behning; Rep. Ralph Foley; Sen. Travis Holdman; Sen. Michael Delph; Sen. Greg Taylor; Scott Chinn; Jon Laramore; Hon. John G. Baker; Mike McMahon; Jerry Bonnet; Anita Samuel.

Members Absent: Sen. James Arnold; Rep. John Bartlett; Richard Bramer.

Staff Present: Mr. Jack Ross, Executive Director, Legislative Services Agency; Mr. John Stieff, Director, Office of Code Revision, Legislative Services Agency; Mr. George Angelone, Deputy Director, Office of Bill Drafting and Research, Legislative Services Agency; Bob Rudolph, Senior Staff Attorney, Office of Bill Drafting and Research; Mr. Craig Mortell, Deputy Director, Office of Code Revision; Ms. Rebecca Mortell, Deputy Director, Office of Code Revision; Mr. Dick Sheets, Editorial Assistant, Office of Code Revision.

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

I. CALL TO ORDER

The meeting was called to order at 10:10 a.m. by Senator Travis Holdman, Chairman.

II. REVIEW OF MINUTES

A motion was made and seconded to adopt the minutes of the Code Revision Commission's October 27, 2010 meeting.

III. INTRODUCTION

Mr. John Stieff, Director, Office of Code Revision, made a few introductory remarks. He introduced attorneys from the Office of Bill Drafting and Research, who were present at the meeting to follow up on information requested by Commission members at the Commission's last meeting.

IV. DISCUSSION OF NONCODE STATUTES PROJECT

A. Noncode Tax Provisions

Mr. George Angelone, Deputy Director, Office of Bill Drafting and Research, reported that at the last meeting of the Code Revision Commission on October 27, 2010, staff had presented a memorandum to the Commission raising the issue of whether some of the provisions of PD 3401 (which codified noncode tax provisions as part of the ongoing noncode statutes project) should be deleted from the final draft as obsolete. The Commission, in response, asked staff to analyze PD 3401 to identify all of the SECTIONS that might fall into one or more of the four categories of potentially obsolete provisions identified in the memorandum. Mr. Angelone distributed a new memorandum to the Commission that provided the requested analysis. He also distributed a revised table of contents.

Mr. Angelone explained that, with the exception of 32 SECTIONS, he was able to assign all the SECTIONS into one of four categories, which he subsequently reduced to three categories. He also created a fourth miscellaneous category for the 32 SECTIONS. He described the categories as follows:

APPENDIX A: This category consists of provisions concerning standards or procedures applicable to one or more particular years. Generally speaking, they require government officials to do something within a specific period of time. This category was further broken down into 3 types of provisions:

Part 1: Miscellaneous property tax and property tax fund provisions.

Part 2: Provisions with references to the Internal Revenue Code, income tax deductions and credits, and initial date that local income tax can be adopted.

Part 3: Provisions concerning controlled projects, property tax appeals, and tax court appeals.

APPENDIX B: This category consists of provisions concerning the authority to adopt temporary rules.

APPENDIX C: This category consists of provisions concerning the initial year of prospective application. This category was further broken down into 3 types of provisions:

Part 1: Provisions referencing "taxable years" or "property taxes first due and payable".

Part 2: Provisions referencing filing dates, assessment dates, distribution dates/notice/mailling dates, payment dates, contract formation dates, and other dates.

Part 3: Provisions referencing dates to tax appeal or tax sales.

APPENDIX D: This category consists of the 32 provisions mentioned earlier that did not fall into any other category.

In the discussion that ensued, Rep. Foley commented that the noncode provisions in Appendices A, B, and C do not guide us today and should not be published as part of the Code. Mr. Laramore inquired whether everything in Appendices A, B, and C referred to past periods and asked Mr. Angelone to confirm that those provisions had no prospective value. Mr. Angelone said that the

provisions in Appendices A, B, and C had no prospective effect. However, the provisions in Appendix A, Part 3, and Appendix C, Part 3, needed to be analyzed differently than the other provisions. The provisions in Appendix A, Part 3, and Appendix C, Part 3, applied to actions that could only be completed in the past but affected the commencement of administrative or court review proceedings that may not yet be resolved. Judge Baker commented that those provisions, though having no effect prospectively, could potentially affect a pending appeal, in which case the defense would be based on a noncode section. Judge Baker said there was no reason to repeal those provisions, but there was no reason to codify them either. Mr. Angelone agreed the language should be preserved for that reason. Rep. Foley asked if the provisions in Appendix D ought to be repealed without recodification. Mr. Angelone indicated that some of the provisions in Appendix D might be considered obsolete but that the provisions in Appendix D were different from the examples of obsolete provisions that the Commission had reviewed at the last meeting and, in some cases, could be declared obsolete only after doing more research into the specific facts addressed by the provisions. For that reason, Mr. Angelone recommended that the Commission codify these provisions until the Commission has more time to evaluate their continuing usefulness.

Judge Baker made a motion, which was seconded and adopted, to:

- (1) repeal the provisions in Appendices A (Part 1 and Part 2), B, and C (Part 1 and Part 2) without recodifying those provisions;
- (2) preserve as noncode the provisions in Appendices A (Part 3) and C (Part 3); and
- (3) repeal and codify the provisions in Appendix D.

B. Other Noncode Provisions

Mr. Bob Rudolph, Senior Attorney, Office of Bill Drafting and Research, and Mr. John Stieff, Director of the Office of Code Provision, explained the other preliminary drafts (PDs) before the Commission concerning noncode provisions:

PD 3558:

Mr. Rudolph explained PD 3558, which does the following:

- Establishes general rules relating to the operation of legislative study commissions and committees.
- Relocates the statute establishing the criminal law and sentencing policy study committee.
- Repeals the article of the Indiana Code set aside as the location for statutes concerning temporary legislative study committees.

Mr. Rudolph stated that this PD reverses the approach taken in the last two years of having two separate articles in the Indiana Code for permanent study committees and temporary study committees. In response to questioning by Rep. Behning, Mr. Rudolph explained that PD 3558 exempts certain committees from the statute's application because they are existing committees that already have their own set of rules in place.

PD 3830:

Mr. Rudolph stated that PD 3830 includes those noncode SECTIONS that did not fall within any of the themes in the other PDs previously distributed to the Commission. He said the draft codifies miscellaneous noncode provisions and repeals the corresponding noncode provisions, and also repeals without codification certain noncode provisions, which were enumerated. Mr. Rudolph explained certain specifics of the draft in greater detail in response to questioning by Senator Delph and Representative Foley. In response to questioning by Mr. Laramore, Mr. Rudolph stated that the repealer of PD 3830 repeals: (1) noncode provisions being codified; and (2) obsolete provisions.

PD 3601:

Mr. Stieff described PD 3601 as a "trailer bill" that (1) deletes certain references to obsolete entities in codified noncode transitional provisions relating to the creation of the Indiana finance authority and (2) repeals a codified noncode statute relating to enforcement of child support orders that was held unconstitutional by the Indiana Court of Appeals. Mr. Stieff explained the second part of PD

3601 as follows: The Department of Child Services informed the Office of Code Revision that the Court of Appeals had declared a child support enforcement provision unconstitutional on the grounds that application of the provision could result in imprisonment for debt; the Department of Child Services is not applying the statute; and the date for appealing the decision of the Court of Appeals to the Indiana Supreme Court has passed. Mr. Stieff said that the repeal of the child support enforcement statute was placed in the trailer bill because it would arguably constitute a substantive change in the law. Judge Baker expressed the opinion that the staff of the Office of Code Revision should make it its practice to draw the Code Revision Commission's attention to statutes that have been declared unconstitutional and that are not being applied by state agencies.

The Commission, by consent, recommended introduction of this trailer bill with inclusion of the following tag line in the digest: "(The introduced version of this bill was prepared by the code revision commission.)" It was determined that Senator Holdman would author the bill.

PD 3875:

Mr. Rudolph explained PD 3875 to the Commission. He stated that PD 3875 repeals all noncode statutes enacted after the 1984 regular session of the general assembly and before the 2010 regular session, except for certain specifically preserved noncode statutes. In response to committee questioning, Mr. Rudolph explained specific examples of noncode statutes being preserved.

Mr. Laramore asked whether the Commission should endorse the approach taken by this PD (i.e. a blanket repealer of almost all noncode statutes). Mr. Rudolph responded that there were three reasons why he took this approach: (1) This was the approach taken previously. When the Indiana Code was originally enacted, all pre-1976 enactments were repealed except for certain, specifically identified acts. (See IC 1-1-1-2) (2) This approach will allow users of the Code greater certainty--they will know that everything is in the Code and that "there is no hidden law out there". (3) This approach is cheaper (in reference to publication costs).

Senator Holdman said that this issue should be kept on the table for future Code Revision Commissions. Judge Baker said, in reference to the proposed preliminary drafts, that he assumed that LSA staff did not want to make any substantive change in the law. He suggested that the Commission should proceed as suggested by staff today but that from now on two bills should be prepared each year: (1) the regular technical corrections bill; and (2) a companion bill that would remove obsolete provisions, even if the removal of those provisions would constitute a substantive change.

Combination draft:

Mr. Rudolph showed the Commission a rough draft of a combination draft he was working on, combining all the individual preliminary drafts prepared in connection with the noncode project, as amended by the Commission. He said the combination draft does one of the following three things to all existing noncode statutes: (1) codifies; (2) preserves as noncode; or (3) repeals. He reported that he is preparing both a disposition table and a derivation table for the combination draft. At the request of Sen. Holdman, Mr. Rudolph listed the preliminary drafts incorporated into the combination draft. They include the following PDs, as amended by the Commission: PD 3128, 3097, 3098, 3099, 3100, 3101, 3141, 3103, 3104, 3134, (3022 was moved into a subsequent PD), 3127, 3181, 3182, 3195, 3201, 3212, 3217, 3221, 3401, 3558, 3830, 3875. Senator Holdman asked Mr. Rudolph to provide the Commission with an updated table describing the various preliminary drafts (PDs) that are being combined into the introduced bill.

A motion was made and seconded to approve the preparation of the combination draft with the inclusion in the digest of the tag line that the introduced version of the bill was prepared by the Code Revision Commission. It was decided that the authors will be Senators Holdman, Delph, and Taylor, and that the sponsors will be Representatives Behning and Foley. Mr. Stieff said that he will check with Representative Bartlett to see if he would also like to be listed as a sponsor.

V. PROPOSED GUIDELINES FOR DRAFTING CODE VS. NONCODE PROVISIONS

Mr. Stieff distributed to the Commission a memo containing proposed drafting guidelines to be followed when drafting a Code or noncode provision. He said the following: These guidelines come into play when drafting a provision that is not applicable to the state generally or is a temporary, transitional, or self-terminating provision. The approach proposed in the memo starts with the assumption that if a provision can be practicably placed in the Code, it should be drafted as an Indiana Code provision instead of a noncode provision. Under this approach, many provisions that in the past were drafted as noncode statutes would now be drafted as Indiana Code statutes. Examples of these provisions are savings clauses, legalizing provisions, the transfer of rules from one agency to another, Medicaid waiver provisions, provisions establishing study committees that exist beyond January 1 after the year of enactment, and applicability provisions.

Mr. Stieff said that the biggest change under the proposed guidelines involves the inclusion of applicability provisions in the Indiana Code. He gave as an example the following provision: "This subsection applies to an insurance policy entered into, extended, or renewed after June 30, 2011." Mr. Stieff went on to state, however, that in some cases it will not be so easy or simple to include applicability language in the Code, and drafters will have to prepare some applicability provisions like this: "The amendments to this section made by the enrolled act enacted in the 2011 regular session of the general assembly apply to insurance policies entered into, extended, or renewed after June 30, 2011." Such a cumbersome phrase will be necessary, he said, because when LSA prepares introduced bills, the bill number is not known. Bill numbers are assigned by the House and Senate once a bill is introduced. As a result, LSA will need to update references to enrolled acts in applicability provisions in the following year's Technical Corrections Bill to provide readers with the Public Law and Section number of the enrolled act referred to in those provisions.

Mr. Stieff noted that, under the proposed new approach, there will also be many more temporary provisions placed in the Indiana Code, and those temporary provisions will eventually have to be cleaned up in the Technical Corrections Bill.

Mr. Stieff asked the Commission whether the proposed guidelines seem reasonable for drafting in the upcoming 2011 legislative session. He said that during the 2011 interim period, OCR will provide the Commission with a set of proposed changes to the General Assembly's Drafting Manual that will include the proposed guidelines on noncode provisions and will seek a recommendation from the Commission that the Legislative Council adopt those changes to the Drafting Manual. Judge Baker advocated changing the Drafting Manual so as to prescribe that provisions found to be obsolete should be taken out of the Code. Senator Holdman thought the guidelines were a practical way to proceed.

VI: Other Business: Addition to the Technical Corrections Bill

Craig Mortell, Deputy Director, Office of Code Revision, proposed one addition to the Technical Corrections Bill approved by the Commission at its October 27, 2010 meeting. The addition was a SECTION resolving the technical conflict among conflicting versions of IC 4-22-2-37.1. A motion was made and seconded to include the addition in the 2011 Technical Corrections bill. (The Commission had at its September 29 meeting authorized the inclusion of the statement "(The introduced version of this bill was prepared by the code revision commission.)" in the digest of the Technical Corrections bill.

Judge Baker announced that he would be leaving his position on the Code Revision Commission as he stepped down from his role as Chief Judge of the Indiana Court of Appeals, and he thanked the Commission and Commission staff for their work.

Senator Holdman thanked the Commission members and LSA staff for their work during the 2010 interim.

VI. Adjournment

The meeting was adjourned at 11:35 a.m.